STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

-vs-

DANIEL HORACEK

Defendant/Appellant.
_____/

Supreme Court
No. 152567

Court of Appeals
No. 317527

Circuit Court
No. 2012-241894-FH

THE PEOPLE'S SUPPLEMENTAL ANSWER IN OPPOSITION TO DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL

JESSICA R. COOPER
PROSECUTING ATTORNEY
OAKLAND COUNTY

THOMAS R. GRDEN
CHIEF, APPELLATE DIVISION

BY: RAE ANN RUDDY (P48329)
Assistant Prosecuting Attorney
Oakland County Prosecutor's Office
1200 North Telegraph Road
Pontiac, Michigan 48341
(248) 858-0705

TABLE OF CONTENTS

INDEX TO AUTHORITIES CITED

CASES — PAGE

RULES

SUPPLEMENTAL COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. WHETHER THE TRIAL COURT AND THE COURT OF APPEALS CLEARLY ERRED IN FINDING THAT THERE WERE EXIGENT CIRCUMSTANCES WHICH WARRANTED THE POLICE TO ARREST DEFENDANT WITHOUT A WARRANT?

Defendant contends the answer is, "Yes."

The People contend the answer is, "No."

II. WHETHER DEFENDANT SHOULD BE PERMITTED TO WITHDRAW HIS PLEA IN THIS CASE WHERE THE SPECIFIED PRETRIAL RULING WAS NOT DISPOSITIVE OF THE CASE?

Defendant contends the answer is, "Yes."

The People contend the answer is, "unclear."

SUPPLEMENTAL COUNTER-STATEMENT OF FACTS

Plaintiff-Appellee People of the State of Michigan (hereinafter the People) incorporate by reference the Counter-Statement of Facts contained in The People's Answer in Opposition to Defendant's Application for Leave to Appeal.

On March 22, 2017, this Court directed the Clerk to schedule this matter for oral argument on whether to grant Defendant's Application or take other action. MCR 7.305(H)(1). The Court further directed that, at oral argument, the parties shall address:

> … (1) whether exigent circumstances authorized the officers' warrantless entry into defendant's motel room, *In re Forfeiture of $176,598*, 443 Mich 261, 271 (1993) ("The police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers and others, or (3) prevent the escape of a suspect.") (citation omitted); see also *People v Oliver*, 417 Mich 366, 384 (1983); and (2) if a constitutional violation did occur, whether the defendant is entitled to withdraw his plea, compare MCR 6.301(C)(2) with *People v Reid*, 420 Mich 326, 337 (1984). The parties may file supplemental briefs within 42 days of the date of this order, but they should not submit mere restatements of their application papers. [Order of this Court dated March 22, 2017].

On May 3, 2017, this Court granted the joint motion for parties to extend time for filing their supplemental briefs to May 24, 2017. This is the People's timely Supplemental Answer in Opposition to Defendant's Application for Leave to Appeal. For this Court's convenience, copies of the video recording at the Dollar Value store robbery are being sent to this Court via First Class Mail and marked as People's Appendix A.

Due to the nature of the claims on appeal, additional pertinent facts may be discussed in the body of the argument section of this brief, *infra*, to the extent necessary to fully advise this Honorable Court as to the issues raised by Defendant on appeal.

ARGUMENT

I. NEITHER THE TRIAL COURT NOR THE COURT OF APPEALS CLEARLY ERRED IN FINDING THAT THERE WERE EXIGENT CIRCUMSTANCES WHICH WARRANTED THE POLICE TO ARREST DEFENDANT WITHOUT A WARRANT.

Standard of Review:

The Court of Appeals reviews for clear error a trial court's findings of fact in a suppression hearing, and reviews *de novo* its ultimate decision on a motion to suppress. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). This Court considers questions of constitutional law *de novo* and findings of fact for clear error. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

Discussion:

As indicated in their original Answer in Opposition and in the Brief of Amicus, it is important to note that there was no evidence seized from the motel room which was [or was intended to be] used to convict Defendant in the robbery case. Besides Defendant himself, and an exculpatory statement from him that "Jack and Dave" forced him to take the money, no other evidence from the motel was, or will be, used against him because it is irrelevant to the charged offense. In his Reply Brief in Support of his Application for Leave to Appeal, Defendant indicates that "Mr. Horacek believes the government also found keys to the vehicle in the motel room which could have been used to link him to recent use of the vehicle and bolster the government's case." (Reply Brief, 9). That, however, is not the case. Rather, the police have the actual car rented to Defendant, which is visible on the video recording of the robbery. [See Appendix A]. Therefore, even if the keys were found on Defendant during the search of the motel room, they are not necessary to this case where stronger evidence would obviously be the video of Defendant driving the car and the rental agreement in his name.

As indicated in the People's original Answer in Opposition, suppression of the evidence, not dismissal of the charges is the remedy for an illegal search and seizure. *People v Chambers*, 195 Mich App 118, 120; 489 NW2d 168 (1992), citing *People v Dalton*, 155 Mich App 591, 597; 400 NW2d 689 (1986). See also *People v Spencley*, 197 Mich App 505, 508; 495 NW2d 824 (1992), citing *Burrill*, *supra* at 133; *Dalton*, *supra* at 597, and *Wong Sun v United States*, 371 US 471; 83 S Ct 407; 9 L Ed 2d 441 (1963). In this case, even if the court had found that the entry into the motel room was not justified without a warrant, suppression of the evidence and not dismissal is the remedy. Since there was no evidence used against Defendant in the motel room, and he did not make any inculpatory statements, the issue of the arrest is inconsequential in this case. As will be more fully developed in Argument II, *infra*, where there is no "evidence" at issue, whether or not the police violated Defendant's Fourth Amendment rights is essentially irrelevant in this case. Where the trial court's decision on the issue has absolutely no actual impact on this case, it should not form the basis for reversal.

Plaintiff-Appellee incorporates by reference their arguments with regard to this issue as contained in The People's Answer in Opposition to Defendant's Application for Leave to Appeal filed with this Court on June 3, 2016.

II. ASSUMING THAT THERE WAS A CONDITIONAL PLEA, AND THAT BOTH JUDGE KUMAR AND THE COURT OF APPEALS ERRED IN DETERMINING THAT THERE WERE EXIGENT CIRCUMSTANCES TO ENTER THE MOTEL ROOM, DEFENDANT SHOULD NOT BE PERMITTED TO WITHDRAW HIS PLEA IN THIS CASE WHERE THE SPECIFIED PRETRIAL RULING WAS NOT DISPOSITIVE OF THE CASE.

Standard of Review:

A motion to withdraw a guilty plea is a matter within the trial court's discretion and the trial court's decision will not be disturbed unless there is an abuse of discretion. *People* v *Kennebrew*, 220 Mich App 601; 560 NW2d 354 (1996). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Smith v Smith*, 278 Mich App 198, 207; 748 NW2d 258 (2008).

Discussion:

Plaintiff-Appellee incorporates by reference their arguments with regard to Issues II, III and IV as contained in The People's Answer in Opposition to Defendant's Application for Leave to Appeal filed with this Court on June 3, 2016.

In further response, the People point out that in finding no merit to Defendant's claims on appeal, the Court of Appeals in this case (Judges Talbot, Wilder and Fort Hood) wrote:

> . . . even assuming the search was unconditional, defendant's plea was not conditional pursuant to *People v Reid*, 420 Mich 326. While MCR 6.301(C)(2) would permit defendant to revoke a conditional plea if "a specified pretrial ruling is overturned on appeal," MCR 6.301(C)(2) does not specify the definition or requirements of a conditional plea. In *Reid*, the Court established the use of conditional pleas where (1) the defendant pleads guilty, (2) the parties and the court agree that the plea is conditioned on the defendant's right to appeal an adverse pretrial ruling, and (3) *the defendant could not be prosecuted if the pretrial ruling is decided in his favor*. *Reid*, 420 Mich at 337. Here, it is clear that defendant could still be prosecuted even without the admission of his statement. At the plea hearing, the prosecutor stated that any Fourth Amendment violation would be harmless beyond a reasonable doubt because there was sufficient untainted evidence to prosecute the defendant. Further, the prosecutor has made clear on appeal that it will proceed against defendant if the case is remanded. [*Horacek, supra* at slip op 4. Emphasis in original].

Because it is unquestionable that the People can proceed against Defendant without using the "fruits" of what Defendant alleges to be an illegal search, there is no question that under the ruling in *People v Reid*, Defendant is unable to demonstrate that he is entitled to relief. The People agree with the Court of Appeals that MCR 6.301(C)(2) fails to specify the definition or requirements of a conditional plea, and further agree that "it is clear that defendant could still be prosecuted even without the admission of his statement." [*Horacek, supra* at slip op 4]. The question remains, however, whether MCR 6.301(C)(2) mandates the same result.

In *People v Reid*, this Court found:

> In sum, we hold that a defendant in a criminal case may, after pleading guilty, appeal a decision denying a motion to suppress evidence *where, as here, **the defendant could not be prosecuted** if his claim that a constitutional right against unreasonable search and seizure was violated is sustained and the defendant, the prosecutor, and the judge have agreed to the conditional plea*. If they so agree, the defendant may offer a conditional plea of guilty, and, after his conviction on such a plea, he may appeal from the adverse ruling on his search and seizure claim. If the defendant's claim is sustained on appeal, he may withdraw his plea. [*Reid*, at 337. Emphasis added].

In adopting MCR 6.301(C)(2), the Court *incorporated* and expanded *Reid* by allowing other forms of pleas [nolo contendere, guilty but mentally ill, not guilty by reason of insanity] and by clarifying that the defendant may withdraw his plea if a specified ruling is overturned on appeal. See MCR 6.301(C)(2) and Staff Comment. In *Reid*, the prosecutor admitted that "they could not have proceeded with this prosecution without the evidence that Jordan and Reid sought to suppress." *Id*., at 334. In that regard, the People have to agree that MCR 6.301(C)(2) fails to incorporate that language into the rule and, therefore, suggest that the court rule be amended or modified to clarify that, in order for a defendant to be permitted to withdraw his plea, in addition to the pretrial ruling being reversed on appeal, the issue must have been dispositive to the outcome of the case.

The conditional plea rules in a large number of jurisdictions[1] follow the language of the federal rule, USCS Fed Rules Crim R 11, which states, in pertinent part:

> **(a) Entering a Plea.**
> **(1)** *In general.* A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.
> **(2)** *Conditional Plea.* With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.
>
> *** * ***
>
> **(h) Harmless Error.** A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

With the exception of MCR 6.301(C)(2) allowing the terms of the conditional plea to be made "orally on the record", Michigan essentially follows the federal standard. Of critical note to the federal standard and a majority of jurisdictions is the fact that they require the consent of the government. The Notes of Advisory Committee on the 1983 amendments to FR Crim P 11 regarding the benefits of the conditional plea is instructive as to why the rule was amended, and why the consent of the government is necessary.[2] The 1983 Notes indicate:

> The Supreme Court has characterized the New York practice, whereby appeals from suppression motions may be appealed notwithstanding a guilty plea, as a "commendable effort to relieve the problem of congested trial calendars in a manner that does not diminish the opportunity for the assertion of rights guaranteed by the Constitution." *Leflowitz v Newsome*, 430 US 283, 293 (1975). That Court has never discussed conditional pleas as such, but has permitted without comment a federal appeal on issues preserved by a conditional plea**.** *Jaben v United States*, 381 US 214 (1965). In the absence of specific authorization by statute or rule for a conditional plea**,** the circuits have divided on the permissibility of the practice.
>
> * * *

[1] See for example: DC SCR-Crim Rule 11 (2017); Haw R Penal P Rule 11 (2017); ICR Rule 11 (2016); ME R U Crim P Rule 11 (2016); Md Rule 4-242 (2017); 46-12-204, MCA (2017); NJ Court Rule, R 3:9-3 (2017); NDR Crim P Rule 11 (2017); ORS § 135.335 (2017); Utah R Crim P Rule 11 (2017); VR Cr P Rule 11 (2017); W Va R Crim P Rule 11 (2017); WR Cr P Rule 11 (2017).

[2] The People acknowledge that the Notes of Advisory Committee are not binding upon this Court but they do provide useful guidance.

The conditional plea procedure provided for in subdivision (a)(2) will, as previously noted, serve to conserve prosecutorial and judicial resources and advance speedy trial objectives. It will also produce much needed uniformity in the federal system on this matter; see *United States v Clark*, *supra*, noting the split of authority and urging resolution by statute or rule. Also, the availability of a conditional plea under specified circumstances will aid in clarifying the fact that traditional, unqualified pleas do constitute a waiver of nonjurisdictional defects. See *United States v Nooner*, *supra* (defendant sought appellate review of denial of pretrial suppression motion, despite his prior unqualified guilty plea, claiming the Second Circuit conditional plea practice led him to believe a guilty plea did not bar appeal of pretrial issues).

The obvious advantages of the conditional plea procedure authorized by subdivision (a)(2) are not outweighed by any significant or compelling disadvantages. As noted in Comment, *supra*, at 375: "Four major arguments have been raised by courts disapproving of conditioned pleas. The objections are that the procedure encourages a flood of appellate litigation, militates against achieving finality in the criminal process, reduces effectiveness of appellate review due to the lack of a full trial record, *and forces decision on constitutional questions that could otherwise be avoided by invoking the harmless error doctrine*." But, as concluded therein, those "arguments do not withstand close analysis." *Ibid*.

* * *

With respect to the objection that conditional pleas circumvent application of the harmless error doctrine, it must be acknowledged that "[a]bsent a full trial record, containing all the government's evidence against the defendant, invocation of the harmless error rule is arguably impossible." Comment, *supra*, at 380. But, the harmless error standard with respect to constitutional objections is sufficiently high, see *Chapman v California*, 386 US 18 (1967), that relatively few appellate decisions result in affirmance upon that basis. Thus it will only rarely be true that the conditional plea device will cause an appellate court to consider constitutional questions which could otherwise have been avoided by invocation of the doctrine of harmless error.

To the extent that these or related objections would otherwise have some substance, they are overcome by the provision in Rule 11(a)(2) that **the defendant may enter a conditional plea only "with the approval of the court and the consent of the government."** (In this respect, the rule adopts the practice now found in the Second Circuit.) The requirement of approval by the court is most appropriate, as it ensures, for example, that the defendant is not allowed to take an appeal on a matter which can only be fully developed by proceeding to trial; cf. *United States v MacDonald*, *supra*. As for consent by the government, ***it will ensure that conditional pleas will be allowed only when the decision of the court of appeals will dispose of the case either by allowing the plea to stand or by such action as compelling dismissal of the indictment or suppressing essential evidence***. Absent such circumstances, the conditional plea might only serve to postpone the trial and require the government to try the case after

> substantial delay, during which time witnesses may be lost, memories dimmed, and the offense grown so stale as to lose jury appeal. *The government is in a unique position to determine whether the matter at issue would be case-dispositive, and, as a party to the litigation, should have an absolute right to refuse to consent to potentially prejudicial delay*. Although it was suggested in *United States v Moskow*, *supra*, that the government should have no right to prevent the entry of a conditional plea because a defendant has no comparable right to block government appeal of a pretrial ruling pursuant to 18 USC § 3731, that analogy is unconvincing. That statute requires the government to certify that the appeal is not taken for purposes of delay. Moreover, where the pretrial ruling is case-dispositive, § 3731 is the only mechanism by which the government can obtain appellate review, but a defendant may always obtain review by pleading not guilty. [Notes of Advisory Committee on 1983 Amendments].

It is clear from the Notes that when Rule 11 was amended in 1983, a critical requirement was that the government consent to the conditional plea because it is the government which is in the best position to determine if the contested issue will be dispositive of the case or if, like here, it is an inconsequential issue which could not possibly make a difference in the outcome of the trial even if the appellate court agreed with the defendant. That was the determination made by this Court in *Reid*, *supra* at 377, and should likewise be contained within, or implied by, MCR 3.601(C)(2), which, like the federal rule, requires the consent of the Court and the Prosecutor.

In the case at bar, when Judge Kumar and defense counsel were discussing the suppression motion and the preservation of same for appellate review, the assistant prosecutor stated unequivocally that he did not "want to get into all of this 'if then'" because "[m]y position is even if the Court ruled against me on this Fourth Amendment issue . . . we'd still be able to proceed. . ." (MT, 19). This is precisely why the Advisory Committee for the federal rule insisted on the inclusion of the "with the consent of the government" aspect of Rule 11; if the issue is not case dispositive, then the government can, and should, withhold consent to the conditional plea. It is presumably why this Court likewise originally included the "only with the consent of . . . the prosecutor" language in MCR 6.301(C)(2).

It is, and has been, the People's position that Defendant's "Fourth Amendment issue" in this case was a distraction intended to obfuscate the fact that Defendant is caught on video robbing the victim at the Dollar Value store. In all of his pleadings thus far, Defendant argues that he is entitled to relief because the police never obtained a warrant before going into his motel room to arrest him, but he never explains what it is with regard to the robbery that was found in the motel room besides him. Defendant has, from the beginning, ignored the fact that there was no evidence found in the motel room that the People intended to use to convict him of robbing the victim. [See MT, 4, where defense counsel, in speaking about the drugs and paraphernalia found in the motel room, noted, "[m]y client was not charged with anything related to that."] Since the beginning, the People have questioned Defendant as to what evidence he alleges should be suppressed. [See MT, 6-7, where the trial APA indicated that "it was a little bit unclear as to what he was seeking the Court to suppress."]

Defendant now contends [in his June 24, 2016 Reply Brief] that the People *might* decide, at some point in the future, to charge him with the drugs and paraphernalia found in the motel room, despite the fact that there is literally no need whatsoever to prosecute him for two minor drug offenses when he was facing a felony charge for the robbery.[3] During the motion and plea, the assistant prosecutor repeatedly stated that there was no intention of prosecuting him for the narcotics and, as pointed out by amicus, if for some reason a decision is made to prosecute the drug offenses five years after the fact, Defendant's Motion to Suppress could correctly be raised in that case. To raise the issue in this case is nothing more than a diversion to deflect from the fact that the robbery was captured on video.

[3] Defendant has since been convicted of four additional felonies following his initial parole in the instant case. See the Offender Tracking Information System. http://mdocweb.state.mi.us/OTIS2/otis2.aspx. Following the arrest in those cases, Defendant's parole was revoked and he was returned to prison.

With regard to the car keys that Defendant alleges might have been found in the motel room when he was arrested, as pointed out in Argument I, *supra*, if keys were found in the motel, they are not the best evidence linking Defendant to the car. The People have the rental agreement bearing Defendant's name and he is captured on video driving the rental car away from the robbery, as witnessed by the victim of the robbery.[4] Again, nothing found in the motel room was, or will be used to prosecute the robbery of the Dollar Value store.

The instant case provides the perfect example of why MCR 6.301(C)(2) should be interpreted or amended to reflect this Court's ruling in *Reid*. In this case, under the apparent mandates of the court rule, if the appellate court were to overturn the trial court's ruling on the Fourth Amendment issue, regardless of whether or not the fruits of the search were necessary for Defendant's conviction, Defendant would be permitted to withdraw his plea. Such a result would be contrary to the efficient administration of justice where there is virtually no chance that anything from the motel room will be used to convict him.

In his Reply Brief, Defendant argues that the Court of Appeals "has repeatedly allowed defendants to withdraw their pleas without regard to whether the prosecution can proceed." (Reply Brief, 8). However, neither of the two unpublished cases that he cites support that claim. In *People v Jones*, unpublished opinion per curiam of the Court of Appeals, issued March 3, 2009 (Docket No. 281816), the prosecution agreed that defense counsel was ineffective for not informing the defendant about conditional pleas; in *People v Kerr*, unpublished opinion per

[4] In his Reply Brief filed with this Court on June 24, 2016, Defendant points out that contained within the People's Answer and during argument on the motion to suppress, there are statements made regarding what was found in the motel room, what occurred on the night of the robbery and at the time of arrest, and information contained with the incident reports. The People agree that the actual record in this case is sparse, but point out that the Motions to Suppress and Quash were motions, not evidentiary hearings. In addition, both the trial APA and defense counsel were in possession of the incident reports when preparing their pleadings and arguing during the hearing. [See 9/15/15 COA Opinion, 4]. Even without a more developed record in this case, the People posit that this Court can render a decision and find, in any event, that the suppression of evidence will not be dispositive in this case.

curiam of the Court of Appeals, issued October 1, 1996 (Docket No. 188951), the court found no error in the admission of the evidence and the defendant's conviction was affirmed. In neither case was the defendant permitted to withdraw his plea where the issue he raised was irrelevant to the outcome or prosecutability of the case. Defendant cites no authority for his contention that the dispositive aspect of MCR 6.301(C)(2) is irrelevant.

In addition, in his Reply Brief, Defendant seems to indicate that a dispositive aspect to MCR 6.301(C)(2) is unnecessary because MCR 2.613(A) would allow the appellate court to disregard or dismiss the conditional plea rule if the admission of the evidence is harmless. (Defendant's Reply Brief, 8). While the People agree that harmless error analysis should apply in this case (and in any case where the contested issue is not dispositive of the outcome), not including the dispositive language in the court rule, and relying upon *Reid*, *supra* or a civil procedure rule to clarify the issue creates confusion for the litigant; modification of the court rule will settle the matter definitively.

As noted in the People's initial Answer in Opposition, this Court has often recognized, that with the exception of structural errors (which this is not), most cases are subject to harmless error analysis. See generally *People v Cain*, 498 Mich 108, 119 fn 4; 869 NW2d 829 (2015); *People v Toma*, 462 Mich 281; 613 NW2d 694 (2000); *People v Anderson (After Remand)*, 446 Mich 392; 521 NW2d 538 (1994); *Arizona v Fulminante*, 499 US 279, 309-310; 111 S Ct 1246; 113 L Ed 2d 302 (1991). Based on this, the harmless error component to MCR 6.301(C)(2) can be implied. However, the People cannot disagree that *Reid* and the conditional plea court rule seem to be inconsistent or, at the very least, confusing. The People further agree with the Court of Appeals that, since the court rule does not address it, reliance upon *Reid* and a common sense approach would dictate in this case that Defendant is not entitled to relief here.

As the People have been indicating since the Motion to Withdraw No Contest Plea, Defendant did, in fact, receive several benefits from his plea in this case which will no longer be available to him if the plea is withdrawn. If Defendant withdraws his plea, Judge Kumar is no longer bound to sentence him to a minimum of 33 months, which was three months below his guidelines range. In addition, while on parole in this case, Defendant committed four more crimes for which he is serving added (consecutive) time in the Michigan Department of Corrections (MDOC). Defendant was also charged with two counts of Bank Robbery Utilizing Force by the United States Attorney's Office for the Eastern District of Michigan in 2015 to which he entered into a plea agreement in October of 2016, and is scheduled to be sentenced on May 31, 2017. Based on this additional criminal behavior while under the supervision of the MDOC, Judge Kumar could substantially increase Defendant's sentence upon conviction. Finally, and of critical import is the fact that, in exchange for Defendant's no contest plea in 2012, the People forewent filing a motion to reinstate the original Armed Robbery charge in this case pursuant to *People v Goecke*, 457 Mich 442; 579 NW2d 868 (1998), which, based on the video recording of the robbery, would have a relatively strong chance of success.

Plaintiff-Appellee incorporates by reference their arguments with regard to Issues IV as contained in The People's Answer in Opposition to Defendant's Application for Leave to Appeal filed with this Court on June 3, 2016 regarding the Harmless Error arguments specifically pertaining to this case.

In sum, even if this Court finds that Judge Kumar and the Court of Appeals erred in finding that there were exigent circumstances to enter and arrest him in the motel room, Defendant would still not be entitled to withdraw his plea where no evidence of the robbery was found in the motel. Unlike *Reid*, Defendant in this case can still be prosecuted even without any

evidence from the motel room. As pointed out by this Court in its March 22, 2017 Order, there does appear to be inconsistency between *Reid* and MCR 6.301(C)(2), which indicates in the Comments that the rule was intended to incorporate and expand *Reid*. Applied as suggested by Defendant would not be an expansion of *Reid* but rather a limiting of requirements necessary to warrant relief. As the Court of Appeals in this case correctly pointed out:

> . . . In *Reid*, the Court established the use of conditional pleas where (1) the defendant pleads guilty, (2) the parties and the court agree that the plea is conditioned on the defendant's right to appeal an adverse pretrial ruling, and (3) *the defendant could not be prosecuted if the pretrial ruling is decided in his favor*. *Reid*, 420 Mich at 337. [*Horacek, supra* at 4. Emphasis in original].

This Court should find that, consistent with *Reid*, the federal standard, and the majority of jurisdictions that allow conditional pleas, if the contested issue is not dispositive of the case, relief by plea withdrawal is not warranted.

The conditional plea is a valuable tool in the efficient and fair administration of justice. Application of the plea withdrawal rule to a non-dispositive issue, however, does nothing more than waste judicial resources and promote Pyrrhic victory at the expense of consistency and finality. Suppression of the evidence seized in the motel room plays no part in the case against Defendant for the June 4, 2012 Robbery of Sarah Halyckyj at the Dollar Value store in Orion Township. Consistent with the opinions of Judge Kumar and the Court of Appeals in this case, this Court should find that Defendant's plea was knowingly, voluntarily and accurately made, deny his application for leave to appeal, and clarify that MCR 6.301(C)(2) should be read consistently with *People v Reid* and FR Crim P 11.

RELIEF

WHEREFORE, Jessica R. Cooper, Prosecuting Attorney in and for the County of Oakland, by Rae Ann Ruddy, Assistant Prosecuting Attorney, respectfully requests that this Honorable Court deny Defendant's Application for Leave to Appeal, affirm his conviction and sentence in the Oakland County Circuit Court, and amend MCR 6.301(C)(2) to clarify that the contested issue must be dispositive of the case.

Respectfully Submitted,

JESSICA R. COOPER
PROSECUTING ATTORNEY
OAKLAND COUNTY

THOMAS R. GRDEN
CHIEF, APPELLATE DIVISION

By: /s/ Rae Ann Ruddy
(P48329)
Assistant Prosecuting Attorney
1200 N. Telegraph Road
Pontiac, Michigan 48341
(248) 858-0705

DATED: May 24, 2017